



INTERIOR BOARD OF INDIAN APPEALS

Washoe Tribe of Nevada & California v. Phoenix Area Director,
Bureau of Indian Affairs

18 IBIA 192 (03/15/1990)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

WASHOE TRIBE OF NEVADA AND CALIFORNIA
v.
PHOENIX AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-101-A

Decided March 15, 1990

Appeal from a denial of a Core Management grant application.

Affirmed.

1. Indians: Financial Matters: Financial Assistance

The regulations in 25 CFR 278.25, concerning the Core Management grant program, do not set forth a timeframe within which the Bureau of Indian Affairs Area Director must complete the process of reviewing applications.

APPEARANCES: Vernon Wyatt, Chairman, Washoe Tribe of Nevada and California, and Peter J. Sferrazza, Esq., Reno, Nevada, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Washoe Tribe of Nevada and California seeks review of a July 17, 1989, decision of the Phoenix Area Director, Bureau of Indian Affairs (BIA; appellee), denying its application for a fiscal year (FY) 1989 Core Management grant. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Background

Appellant received grant H50G14208817 under the FY 1988 Core Management program. This grant ran from June 24, 1988, through May 31, 1989.

Appellant applied for a new grant under the FY 1989 Core Management program. Appellant's application, which was one of 24 applications received by the Phoenix Area Office, received a review score of 69 after being reviewed at the agency and area office levels. This score placed it fourteenth out of the 24 applications. Twelve applications were funded by the Phoenix Area, for a total Core Management funding of \$385,000.

By letter dated July 17, 1989, appellee informed appellant that its FY 1989 application was denied. Appellee indicated at pages 1-2:

Last year you administered a FY 1988 Core Management Grant that expired on May 31, 1989. This grant contains basically some

of the same grant objectives as those being proposed. There is no information that provides a clear distinction on what the differences are or will be.

The tribal resolution does not authorize any specific official to negotiate contracts, etc., and no grant term is identified.

While the Phoenix Area Office Core Management guidelines and the regulations in 25 CFR [Part] 278 allow for continuation of approval for multi-year grant programs, we must ensure there is evidence that progress is being made. If you will refer to the Core Management Grant guidelines, you will find that continuation of multi-year grant programs is contingent upon (1) a grantee's satisfactory performance (objectives are being accomplished) and (2) the availability of funds.

We refer you again to the Core Management grant guidelines, specifically to the criteria for eligibility for selection of projects. Continued decrease in Congressional allotments for the Core Management Grant limited funds for this program which mandated our establishment of this criteria. This criteria enables us to concentrate on projects of immediate need, which is the intent of this program. First time applicants were also given consideration and priority.

Your program is not an approved multi-year program and therefore, did not meet the priority one ranking. While it met the priority two ranking, which would have enabled the application to be funded, the problems identified above plus a number of other eligible priority one applications prohibited the approval of your application. Priority was also given to first time applicants showing immediate need.

The Board received appellant's notice of appeal from this denial on September 7, 1989. ^{1/} Only appellant filed a brief on appeal.

Discussion and Conclusions

Appellant first argues that appellee violated 25 CFR "Part II" because he did not respond to the grant application within 30 days of its receipt

^{1/} Although the notice of appeal was not timely filed under 43 CFR 4.332(a) (54 FR 6488 (Feb. 10, 1989)), the Board stated in its Sept. 12, 1989, pre-docketing notice: "[T]he Board has been informed in another case arising from the Western Nevada Agency that the agency had given incorrect appeals information to tribes requesting review in similar circumstances. Therefore, unless BIA contests this appeal as being untimely filed, the appeal will be considered." BIA did not contest the timeliness of the filing of this appeal.

and because the December 22, 1988, program guidelines did not state that priority would be given to first-time applicants showing immediate need.

Since appellant does not specify what regulation he alleges appellee violated, the Board assumes that the regulation must be 25 CFR 278.25. Under section 278.25(a)(3), the agency Superintendent is to forward to the Area Office a grant application package that is sufficiently complete with comments and recommendations "within 15 working days of its receipt." Furthermore, section 278.25(b)(2) states: "Upon completion of the application review process the Area Director shall initiate, within 15 working days, one of the following actions." It would appear that appellant has added the "15 working days" mentioned in each of these regulations, and concluded that appellee was required to respond within 30 days from the date it filed its application with the Superintendent.

[1] This conclusion is not supported by the language of the regulation. First, the regulation speaks of "working days," not calendar days. Second and more importantly, the regulation provides that the Area Director's action to advise an applicant of the decision on an application must be taken within 15 working days after completion of the review process. There is no regulatory limitation on the timeframe within which the review process must be completed.

Appellant also argues that appellee violated the regulations because a priority for first-time applicants with immediate need was not set forth in the December 22, 1988, program guidelines. The guidelines to which appellant refers were written in anticipation of the FY 1989 program. Although it is probable that appellee knew at that time how much funding he would have for the program, he did not know how many applications would be filed or what amount of funding would be sought. In a program such as the Core Management program, in which the amounts sought greatly exceed the funds appropriated, BIA must exercise discretion in allocating the limited resources. Until it knows the identity of the applicants and the level of funds sought versus the appropriations available, it cannot make a reasoned determination as to how those limited resources can best be allocated. Appellee's decision to give priority to first-time applicants with demonstrated immediate need is a reasonable exercise of his discretion. Cf. Lower Elwha Tribe v. Portland Area Director, 18 IBIA 50 (1989), upholding BIA's exercise of discretion in awarding funds under the Core Management program through a review and ranking procedure.

Appellant next argues that it is not necessary for it to designate a signatory in every resolution dealing with financial matters because its constitution provides that the Chairman, Vice-Chairman, and Secretary/Treasurer are signatories on behalf of the Tribal Council. This argument overlooks the requirement set out in section VI.D. of the December 22, 1988, guidelines, which provides: "An authorizing tribal council resolution shall accompany each application. * * * The resolutions shall identify: * * * b. The tribal official authorized to negotiate the grant and any amendments thereto; c. The tribal official authorized to sign the grant agreement and any amendments thereto; * * *." Appellant admits receiving these guidelines.

Finally, appellant alleges that the FY 1989 grant application does not duplicate the FY 1988 Core Management grant and lists the differences between the grants. However, appellant's statement of the contents of its FY 1988 grant relates not to that grant, but instead to its FY 1987 grant No. H50G14207818 under Title I of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n (1982). Appellant has not shown that the FY 1989 grant application did not duplicate its FY 1988 Core Management grant.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Phoenix Area Director's July 17, 1989, decision is affirmed.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed

Anita Vogt
Administrative Judge